THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.703 of 2006

Date: 12th October, 2006

Between :-

Bellamkonda Venkatakrishna Rao .. Petitioner

And

Khammam Municipality rep. by its Commissioner, Khammam and another .. Respondents

THE HON'BLE SRI JUSTICE P.S. NARAYANA

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ORDER:-

2. The Writ Petition is filed for a Writ of Mandamus declaring the notice issued by the 1st respondent in Proc.Roc.No.G2/3268/2005, dt.31-12-2005 as illegal, arbitrary and violative of principles of natural justice and consequently direct the respondent No.1 Municipality to conduct enquiry on the basis of the objections filed by the petitioner dt.27-10-2005 and then cancel the building permission granted in favour of 2nd respondent in respect of House No.9-3-127 situated at Station Road, Khamma, and to pass such other suitable orders.

2. It is stated that originally the father of the petitioner was the owner of the house bearing No.9-3-127 situate at Old Club Road, Khammam and it is also stated that his late father executed a *will* on 17-12-1982 bequething the said house in favour of his mother and subsequent to her death, the property i.e., house No.9-3-127 in favour of his brother and other properties had been allotted to the petitioner and other brothers. It is also stated that despite the said *will*, the brother of the petitioner filed O.S.No.42/95 for partition of all the properties and the learned Senior Civil Judge, Khammam dismissed the said

suit on 8-4-2003 and appeal A.S.No.1608/2003 is pending before this Court. It is also stated that the second respondent – the brother's son of the petitioner had applied for permission for construction of the house on the basis of the alleged gift deed dated 12-8-2005 executed by his sister-in-law by name Smt.Usharani and the first respondent – Municipality without verifying the records and without insisting for link document and other documents, mechanically granted building permission in favour of the 2nd respondent in respect of house No.9-3-127. It is also stated that the petitioner submitted objections to the first respondent – Municipality in which he had specifically mentioned about the pendency of civil proceedings and other aspects relating to the dispute. It is also stated that the first respondent instead of issuing notice to both the parties and without any enquiry and without providing any opportunity to him had issued impugned notice dated 31-12-2005 stating that after verification of documents the permission had been granted and the Municipality advised the petitioner to approach Civil Court for redressal. Several other factual details also had been narrated. It is stated that the 2nd respondent without any authority is trying to commence construction by virtue of the permission granted by the

Municipality.

3. In the counter affidavit filed by the first respondent specific stand was taken that only after due verification of the documents and Judgment in O.S.No.108/83 and registered Gift Deed of 7393/2005 dated 12-8-2005 permission for construction of building was sanctioned in favour of second respondent. It is also stated that the petitioner submitted objection petition on 27-10-2005 but however it is further stated that the Municipality had granted permission in favour of 2nd respondent on 7-10-2005 duly verifying the documents since there is no deviation or encroachment on the land of the petitioner. It is also stated that the Municipality had issued a notice to R.2 calling for documents in this regard and R.2 submitted the documents vide reply dated 26-11-2005 and after receiving the reply, the same was forwarded to the Municipal Standing Counsel, Khammam, for obtaining his opinion for cancellation of building permission of R.2 and the Municipal Standing Counsel gave opinion that the dispute is of civil nature and the same to be decided by a competent Civil Court. Accordingly, the Municipality informed the petitioner to approach the Civil Court for redressal because virtually this is a family dispute. It is also stated that the petitioner filed a suit O.S.No.169/2006

and also filed an application I.A.No.93/2006 praying for interim order on the file of II Additional Principal Junior Civil Judge, Khammam, virtually for similar reliefs which had been prayed for in the present Writ Petition and the same are said to be pending.

4. The 2nd respondent filed counter affidavit. Specific stand was taken that by the date of filing of the Writ Petition, the Judgment in O.S.No.42/95 was already rendered wherein the writ petitioner had clearly considered the title in respect of H.No.9-3-127 situated in Khammam in favour of his brother Satyanarayana Rao or his wife Smt.Usha Rani and hence, there is no justification in stating that there is dispute of title with regard to the said property and hence the permission was rightly granted to the 2nd respondent by the 1st respondent. Several other factual details also had been narrated.

5. These additional factual controversies narrated by the parties need not detain this Court any further inasmuch as it is stated that the petitioner already had invoked the jurisdiction of a competent Civil Court in O.S.No.169/2006 on the file of II Additional Principal Junior Civil Judge, Khammam. Hence, liberty is given to the petitioner to raise all these objections in the pending litigation O.S.No.169/2006 aforesaid. Except making this

observation, no further relief can be granted in the present Writ Petition to the writ petitioner.

6. With the above observation, the Writ Petition is disposed of. no order as to costs.

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Justice P.S.Narayana

12th October, 2006

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